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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 ROBERT CONOHAN, individually  
10 and on behalf of all others similarly  
11 situated,

12 Plaintiff,

13 vs.

14 GEN DIGITAL, INC., an Arizona  
15 corporation; and DOES 1 through  
16 25, inclusive,

17 Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR:**

**1. VIOLATIONS OF THE  
CALIFORNIA TRAP AND  
TRACE LAW (CAL. PENAL  
CODE § 638.51)**

1 **JURISDICTION**

2 1. This Court has subject matter jurisdiction over this action pursuant to  
3 the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because the total  
4 matter in controversy exceeds \$5,000,000 and there are over 100 members of the  
5 proposed class. Further, at least one member of the proposed class is a citizen of a  
6 State within the United States and at least one defendant is the citizen or subject of  
7 a foreign state.

8 2. This Court has personal jurisdiction over Defendant because, on  
9 information and belief, Defendant has purposefully directed its activities to the  
10 Central District of California by regularly engaging with individuals in California  
11 through its website. Defendant's illegal conduct is directed at and harms California  
12 residents, including Plaintiff, and if not for Defendant's contact with the forum,  
13 Plaintiff would not have suffered harm.

14 3. Venue is proper in the Central District of California pursuant to 28  
15 U.S.C. § 1391 because Defendant (1) is authorized to conduct business in this  
16 District and has intentionally availed itself of the laws and markets within this  
17 District; (2) does substantial business within this District; (3) is subject to personal  
18 jurisdiction in this District because it has availed itself of the laws and markets  
19 within this District; and the injury to Plaintiff occurred within this District.

20 **PARTIES**

21 4. Plaintiff Robert Conohan ("Plaintiff") is a citizen of California  
22 residing within the Central District of California.

23 5. Defendant Gen Digital, Inc. ("Defendant" or "Gen Digital") is an  
24 Arizona corporation that owns, operates, and/or controls www.us.norton.com, an  
25 online platform that sells antivirus, malware, ransomware, and hacking protection  
26 services.

1           6.     The above-named Defendant, along with its affiliates and agents, are  
2 collectively referred to as “Defendants.” The true names and capacities of the  
3 Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are  
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
5 names. Each of the Defendants designated herein as a DOE is legally responsible  
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
7 Complaint to reflect the true names and capacities of the DOE Defendants when  
8 such identities become known.

9           7.     Plaintiff is informed and believes that at all relevant times, every  
10 Defendant was acting as an agent and/or employee of each of the other Defendants  
11 and was acting within the course and scope of said agency and/or employment with  
12 the full knowledge and consent of each of the other Defendants, and that each of  
13 the acts and/or omissions complained of herein was ratified by each of the other  
14 Defendants.

### 15                           **FACTUAL ALLEGATIONS**

16           8.     Gen Digital, Inc. is the proprietor of [www.us.norton.com](http://www.us.norton.com), an online  
17 platform that sells antivirus, malware, ransomware, and hacking protection  
18 services.

19           9.     Defendant has installed on its Website software created by TikTok in  
20 order to identify website visitors (the “TikTok Software”).

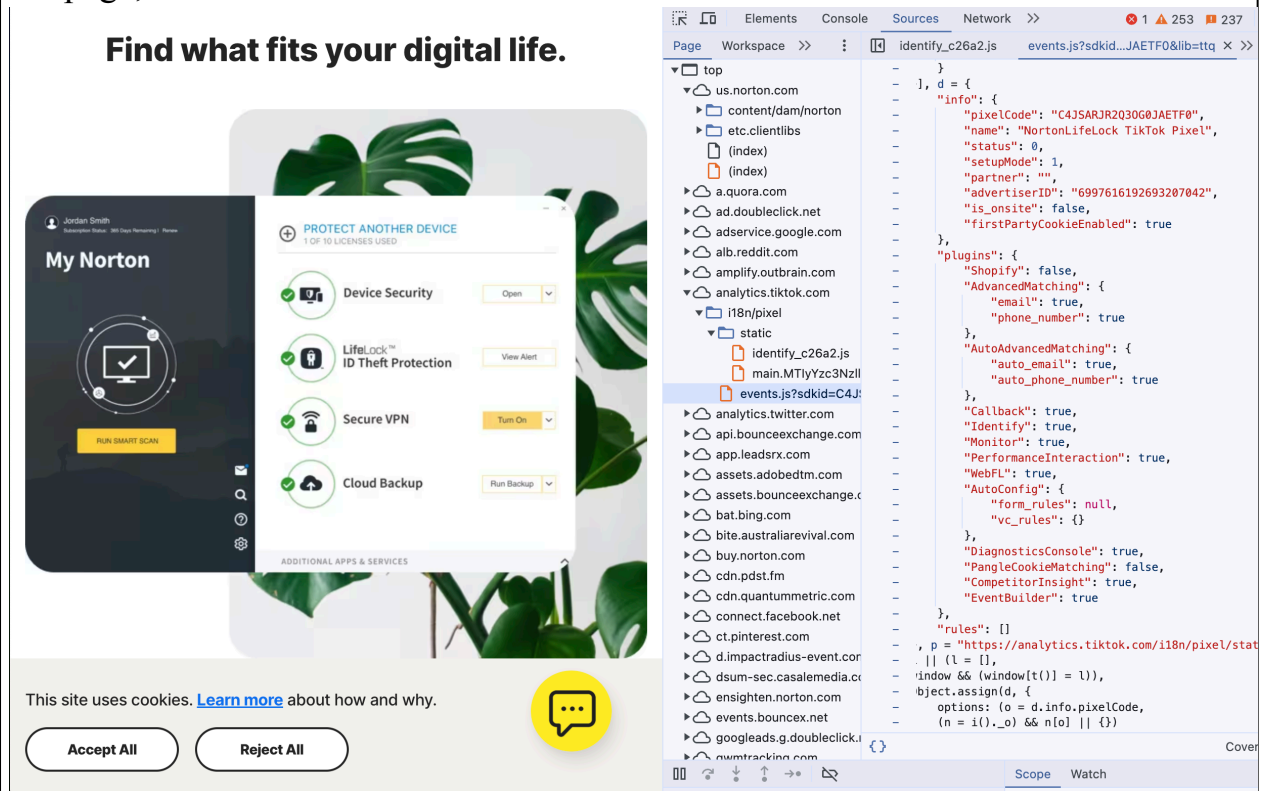
21           10.    The TikTok Software acts via a process known as “fingerprinting.”  
22 Put simply, the TikTok Software collects as much data as it can about an otherwise  
23 anonymous visitor to the Website and matches it with existing data TikTok has  
24 acquired and accumulated about hundreds of millions of Americans.

25           11.    The TikTok Software gathers device and browser information,  
26 geographic information, referral tracking, and url tracking by running code or  
27 “scripts” on the Website to send user details to TikTok.

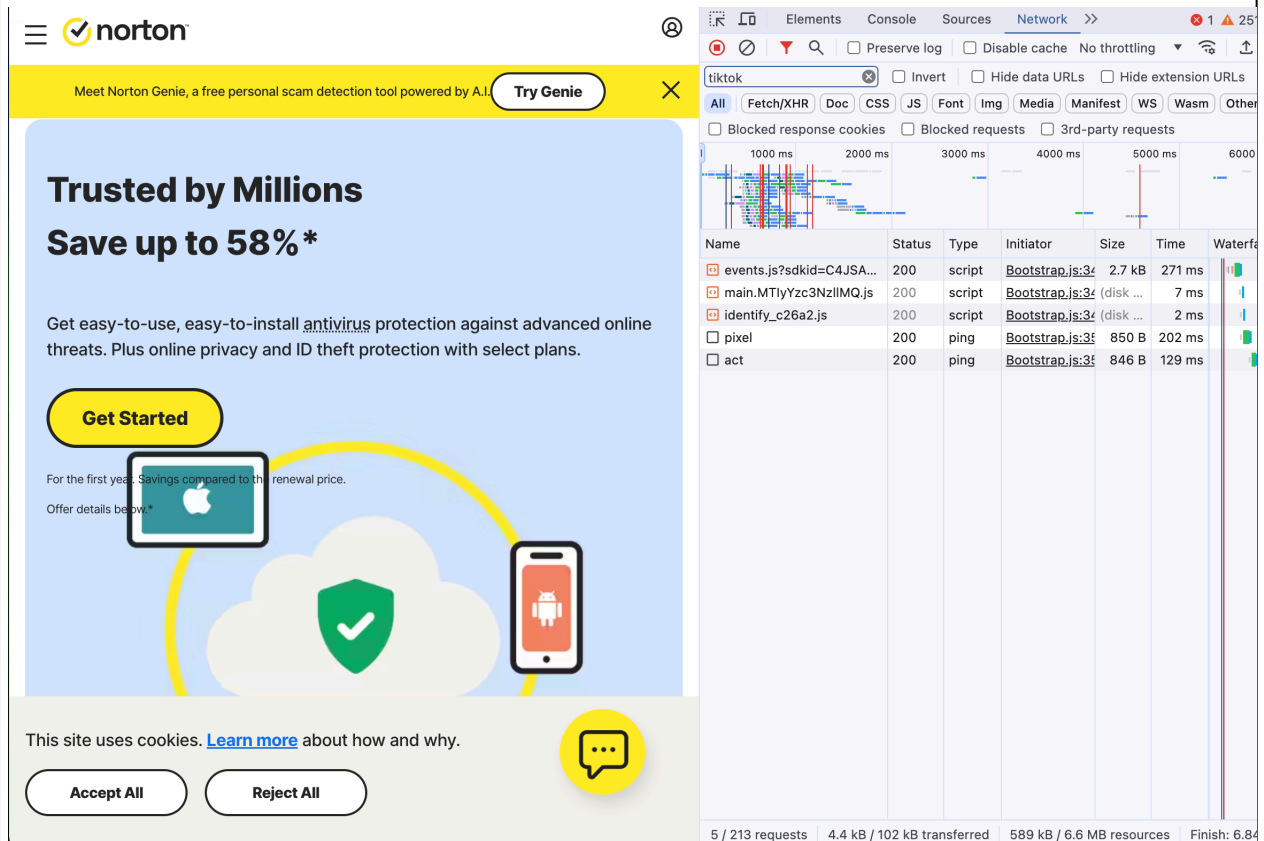
12. The TikTok Software begins to collect information the moment a user lands on the Website. Thus, even though the Website has a “cookie banner” the information has already been sent to TikTok regarding the user’s visit.

13. Additionally, since Gen Digital has decided to use TikTok’s “AutoAdvanced Matching” technology, TikTok scans every website for information, such as name, date of birth, and address, the information is sent simultaneously to TikTok, so that TikTok can isolate with certainty the individual to be targeted.

14. The TikTok Software runs on virtually every page of Gen Digital’s website, sending to TikTok images of website user’s interest in Defendant’s services. An image of the code, as it appears side by side (and simultaneously) with the TikTok AutoAdvanced Matching tracking code Gen Digital has placed on the page, can be seen here:



1           15. The Gen Digital website instantly sends communications to TikTok  
2 when a user lands, and every time a user clicks on a page. In the examples below,  
3 the right side of the image shows the various TikTok scripts being run by  
4 Defendant, and the electronic impulses being sent to TikTok to add to their  
5 collection of user behavior.



20           16. California Penal Code § 638.50(c). California law defines a “trap and  
21 trace device” as “a device or process that captures the incoming electronic or other  
22 impulses that identify the originating number or other dialing, routing, addressing,  
23 or signaling information reasonably likely to identify the source of a wire or  
24 electronic communication, but not the contents of a communication.” California  
25 Penal Code § 638.50(c).

26           17. The TikTok Software is a process to identify the source of electronic  
27 communication by capturing incoming electronic impulses and identifying dialing,  
28

1 routing, addressing, and signaling information generated by users, who are never  
2 informed that the website is collaborating with the Chinese government to obtain  
3 their phone number and other identifying information.

4 18. The TikTok Software is “reasonably likely” to identify the source of  
5 incoming electronic impulses. In fact, it is designed solely to meet this objective.

6 19. Defendant did not obtain Class Members’ express or implied consent  
7 to be subjected to data sharing with TikTok for the purposes of fingerprinting and  
8 de-anonymization.

9 20. CIPA imposes civil liability and statutory penalties for the installation  
10 of trap and trace software without a court order. California Penal Code § 637.2; see  
11 also, *Greenley v. Kochava*, 2023 WL 4833466, at \*15-\*16 (S.D. Cal. July 27,  
12 2023).

13 21. Defendant did not obtain Class Members’ express or implied consent  
14 to be subjected to data sharing with TikTok for the purposes of fingerprinting and  
15 de-anonymization.

### 16 **CLASS ALLEGATIONS**

17 22. Plaintiff brings this action individually and on behalf of all others  
18 similarly situated (the “Class”) defined as follows:

19 **All persons within California who within the statute of**  
20 **limitations period: (1) communicated with Defendant via**  
21 **the chat feature on Defendant’s Website using cellular or**  
22 **landline telephony, and (2) whose communications were**  
23 **recorded and/or eavesdropped upon without prior consent.**

24 23. NUMEROSITY: Plaintiff does not know the number of Class  
25 Members but believes the number to be in the thousands, if not more. The exact  
26 identities of Class Members may be ascertained by the records maintained by  
27 Defendant.

1           24.   COMMONALITY: Common questions of fact and law exist as to all  
2 Class Members, and predominate over any questions affecting only individual  
3 members of the Class. Such common legal and factual questions, which do not  
4 vary between Class members, and which may be determined without reference to  
5 the individual circumstances of any Class Member, include but are not limited to  
6 the following:

- 7                   a. Whether Defendant caused electronic communications from  
8                   class members with the Website to be recorded, intercepted,  
9                   and/or monitored;
- 10                  b. Whether Defendant aided and abetted a third party in  
11                  eavesdropping on such communications;
- 12                  c. Whether Plaintiff and Class Members are entitled to statutory  
13                  penalties; and
- 14                  d. Whether Class Members are entitled to injunctive relief.

15           25.   TYPICALITY: As a person who visited Defendant's Website and  
16 whose electronic communication was recorded, intercepted and eavesdropped  
17 upon, Plaintiff is asserting claims that are typical of the Class.

18           26.   ADEQUACY: Plaintiff will fairly and adequately protect the interests  
19 of the members of The Class. Plaintiff has retained attorneys experienced in the  
20 class action litigation. All individuals with interests that are actually or potentially  
21 adverse to or in conflict with the class or whose inclusion would otherwise be  
22 improper are excluded.

23           27.   SUPERIORITY: A class action is superior to other available methods  
24 of adjudication because individual litigation of the claims of all Class Members is  
25 impracticable and inefficient. Even if every Class Member could afford individual  
26 litigation, the court system could not. It would be unduly burdensome to the courts  
27 in which individual litigation of numerous cases would proceed.

1 **FIRST CAUSE OF ACTION**

2 **Violations of California Trap and Trace Law**

3 **Cal. Penal Code § 638.51**

4 28. Plaintiff repeats and re-alleges the allegations contained in every  
5 preceding paragraph as if fully set forth herein.

6 29. California Penal Code §638.51 (the “California Trap and Trace Law”) provides that “a person may not install or use...a trap and trace device without first  
7 obtaining a court order...” § 638.51(a).

8 30. A “trap and trace device” as “a device or process that captures the  
9 incoming electronic or other impulses that identify the originating number or other  
10 dialing, routing, addressing, or signaling information reasonably likely to identify  
11 the source of a wire or electronic communication, but not the contents of a  
12 communication.” California Penal Code § 638.50(c).

13 31. Defendant uses a trap and trace process on its Website by deploying  
14 the TikTok Software on its Website, because the software is designed to capture  
15 the phone number, email, routing, addressing and other signaling information of  
16 website visitors. As such, the TikTok Software is designed precisely to identify the  
17 source of the incoming electronic and wire communications to the Website.  
18 Defendant did not obtain consent from Plaintiff or any of the class members before  
19 using trap and trace technology to identify users of its Website, and has violated  
20 Section 638.51.

21 32. CIPA imposes civil liability and statutory penalties for violations of  
22 §638.51. California Penal Code § 637.2; see also, *Greenley v. Kochava*, 2023 WL  
23 4833466, at \*15-\*16 (S.D. Cal. July 27, 2023).

24 **PRAYER**

25 WHEREFORE, Plaintiff prays for the following relief against Defendant:  
26  
27



1. An order certifying the Class, naming Plaintiff as the representative of the Class and Plaintiff's attorneys as Class counsel;
2. An order declaring Defendant's conduct violates CIPA;
3. An order of judgment in favor of Plaintiff and the Class against Defendant on the cause of action asserted herein;
4. An order enjoining Defendant's conduct as alleged herein and any other injunctive relief that the Court finds proper;
5. Statutory damages pursuant to CIPA;
6. Punitive damages;
7. Prejudgment interest;
8. Reasonable attorneys' fees and costs; and
9. All other relief that would be just and proper as a matter of law or equity, as determined by the Court.

DATED: August 14, 2024

TAULER SMITH LLP

By: /s/ Robert Tauler  
Robert Tauler, Esq.  
*Attorney for Plaintiff*  
*Robert Conohan*

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Plaintiff Robert Conohan hereby demands a trial by jury.

DATED: August 14, 2024

TAULER SMITH LLP

By: /s/ Robert Tauler  
Robert Tauler, Esq.  
*Attorney for Plaintiff*  
*Robert Conohan*